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Attorneys for the Plaintiff

FILED  
08 JAN 23 PM 3:59  
ORIGINAL  
DEPUTY

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

MARINA GREEN

) CV NO:

Plaintiff,

) COMPLAINT FOR A WRIT  
) IN THE NATURE OF MANDAMUS TO  
) COMPEL ADMINISTRATIVE  
) ACTION

vs.

PETER D. KEISLER, Acting Attorney  
General, Department of Justice;  
MICHAEL CHERTOFF, Secretary of the  
Department of Homeland Security;  
ROBERT MEULLER, III, Director of  
The United States Federal Bureau of  
Investigation; United States  
Citizenship and Immigration  
Services, Chula Vista Sub Office;  
and the UNITED STATES CITIZENSHIP  
AND IMMIGRATION SERVICES

Defendants,

The Plaintiff alleges:

**I. PARTIES**

**A. Plaintiff**

1. Plaintiff, Marina Green, is a resident within the jurisdiction of the Chula Vista Sub Office of the United States Citizenship and Immigration Service ('USCIS').

1        2. In 2005, Plaintiff was petitioned by her U.S. citizen  
2 husband who filed a Petition for Alien Relative (Form I-130) on her  
3 behalf. Concurrently, Plaintiff filed an Application to Adjust to  
4 Permanent Resident Status (Form I-485). Ms. Marina Green's Alien  
number is 096-588-594. On April 20, 2006, the Plaintiff appeared  
6 before an interviewing officer of the Chula Vista Sub Office of the  
7 USCIS for an examination of said Petition for Alien Relative and  
8 Application for Adjustment of Status. The officer did not make a  
9 final decision, and continued the interview for further review. On  
10 December 8, 2006, the Plaintiff appeared before an interviewing  
11 officer of the Chula Vista Sub Office of the USCIS for her second  
12 interview in regards to her pending petition and application. The  
13 officer did not make a final decision and continued the interview  
14 for further review. The Plaintiff has made numerous inquiries,  
15 requesting adjudication of the petition and application. It has  
16 been over two years since said petition and application were filed  
17 and to date they remain unadjudicated. Jurisdiction to adjudicate  
18 the petition and application lies with the Chula Vista Sub Office  
19 of the USCIS and remains pending without resolution.

20 **B. Defendants**

21        3. Defendant PETER D. KEISLER, is the Acting Attorney  
22 General of the United States, and head of the United States  
23 Department of Justice.

24        4. Defendant MICHAEL CHERTOFF, is Secretary of the United  
25 States Department of Homeland Security.

26        5. Defendant, ROBERT MEULLER, III, is the Director of the  
27  
28

1 United States Federal Bureau of Investigation.

2 6. Defendant CHULA VISTA SUB OFFICE of the United States  
3 Citizenship and Immigration Services. The principal address of the  
4 Chula Vista Sub Office is 1261 3<sup>rd</sup> Avenue, Suite A, Chula Vista, CA  
91911.

6 7. Defendant UNITED STATES CITIZENSHIP AND IMMIGRATION  
7 SERVICES, is the federal agency within the United States Department  
8 of Homeland Security which is required under the law to supervise,  
9 implement and enforce the Immigration and Nationality Act,  
10 hereinafter "INA", codified in 8 U.S.C. § 1103 et seq.

11  
12 **II. JURISDICTION AND VENUE**

13  
14 8. This is an action for mandamus in accordance with the  
15 provisions of 28 U.S.C. § 1361 and § 2201. It is brought for the  
16 purpose of determining a question of actual controversy between the  
17 parties as more fully explained in the remainder of this complaint.

18 9. Jurisdiction of this court is invoked pursuant to 28 U.S.C.  
19 § 1331(a), this being an action which arises under the Constitution  
20 and laws of the United States, specifically under the provisions of  
21 the INA, 8 U.S.C. § 1151, et seq.; and pursuant to 28 U.S.C. §  
22 1361, this being an action in the nature of mandamus to compel  
23 officers and employees of an agency of the United States to perform  
24 duties owed to Plaintiff. Plaintiff alleges eligibility for payment  
25 of reasonable attorney's fees under the terms of the Equal Access  
26 to Justice Act, 28 U.S.C. § 2412.

27 10. Venue properly lies in this Court pursuant to the  
28

1 provisions of 28 U.S.C. § 1391(e).

2 **III. CLAIMS FOR RELIEF**

3 **A. MANDAMUS**

4 11. Plaintiff has filed a petition and an application, as  
5 previously described hereinabove, with Defendants. Defendants have  
6 accepted the petition and application, along with their  
7 corresponding filing fees. Plaintiff has also submitted all the  
8 necessary documents in support of said petition and application.  
9 However, through purposeful acts, negligence, poor management and  
10 inattention, Defendants have failed to complete the ministerial  
11 actions that would result in allowing them to adjudicate  
12 Plaintiff's Petition and Application.

13 12. Numerous inquiries have been conducted requesting  
14 information regarding the current status of said petition as well  
15 as for the adjudication of said application. These inquiries were  
16 submitted in accordance with the procedures established by  
17 Defendants for such purposes.

18 13. Defendants have not taken action to complete the  
19 adjudications despite inquiries and requests.

20 14. Defendants have adjudicated similar petitions and  
21 applications filed by persons who are not parties to this action  
22 and which were filed subsequent to the application filed by  
23 Plaintiffs.

24 15. Defendants do not employ any reasonable system to  
25 safeguard that: (1) files are centrally monitored to guarantee  
26 that they are being closed out on a rational, efficient and  
27

1 nonpreferential basis; or (2) applicants are provided with  
2 information on the status of files that have not been adjudicated  
3 on a timely basis.

4 16. Plaintiff has been denied due process of law under the  
terms of the Fifth Amendment to the United States Constitution by  
6 Defendants' neglect and refusal to take action to adjudicate the  
7 pending petition and application.

8 17. Plaintiff has suffered and continues to suffer  
9 irreparable harm as a result of Defendants' delay. This harm  
10 includes: an unreasonable delay in allowing Ms. Marina Green to  
11 establish eligibility for United States citizenship as well as the  
12 many benefits, rights, and privileges of United States citizenship;  
13 inability to receive promotions or otherwise advance in her career;  
14 inability to obtain home or education loans; and generally,  
15 continuing mental distress resulting from her unsettled legal  
16 condition.

17 18. There is no reasonable basis for Defendants' position and  
18 it is not substantially justified under the law.

19 19. Defendants have in their possession all information  
20 necessary to complete the adjudication of said petition and  
21 application. Defendants' refusal to complete this administrative  
22 processing is a disregard of their official duty and Plaintiff is  
23 wholly without remedy, under the circumstances, unless mandamus is  
24 ordered by this Court.

25 **B. VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT**

26 20. Plaintiff re-alleges and incorporates by reference the  
27  
28

1 | allegations set out in paragraphs 1 through 19, inclusive, of this  
2 | Complaint as though fully set forth herein.

3 |       21. The Administrative Procedure Act (APA) provides  
4 | categorically that every agency "shall within a reasonable  
5 | time...proceed to conclude any matter presented to it." 5 U.S.C. §  
6 | 555(b). In recognition that a failure or unwarranted refusal to  
7 | adjudicate should be enjoined, Congress provided in 5 U.S.C. § 706  
8 | et. seq. that courts may review the inaction of an agency and  
9 | specifically "compel agency action unlawfully withheld or  
10 | unreasonably delayed." Likewise, the court may "set aside agency  
11 | action...found to be...arbitrary, capricious, and abuse of  
12 | discretion (or) contrary to constitutional right, power, privilege  
13 | or immunity." 5 U.S.C. § 706 et. seq.

14 |       22. Courts may find unwarranted agency inaction tantamount to  
15 | denial of an application pending before an agency. 5 U.S.C. §  
16 | 555(e).

17 |       23. Defendants' conduct in processing Plaintiff's petition  
18 | and application as described in the aforementioned allegations, is  
19 | capricious and arbitrary and results in severe and unwarranted  
20 | delay to Plaintiff in conferring valuable immigration benefits.  
21 | The delay so incurred is tantamount to a violation of the  
22 | Administrative Procedure Act, 5 U.S.C. § 555(b) and (e), § 702 and  
23 | 706 et. seq. Plaintiff has suffered and continues to suffer severe  
24 | irreparable injury for which there is no adequate remedy at law.

25 | ////

26 | ///

IV. PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays:

1. That judgment be entered ordering Defendants to forthwith adjudicate the Petition for Alien Relative, Form I-130, and Application for Adjustment of Status to Permanent Resident, Form I-485;

2. That Defendants be permanently enjoined from refusing to communicate with attorneys for Plaintiff regarding the status of the case;

3. That Defendants be ordered to pay the cost of suit herein;

4. That Defendants be ordered to pay Plaintiff's reasonable attorney's fee for this action;

5. That the Court grant such other and further relief as it may deem to be necessary and proper.

Dated: November 6, 2007

Respectfully submitted,

ASK LAW GROUP,



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MARIE L. JOHNSON  
Attorneys for the Plaintiff

## CIVIL COVER SHEET

ORIGINAL

JS 44 (Rev. 11/04)

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

MARINA GREEN

(b) County of Residence of First Listed Plaintiff SAN DIEGO  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Marie L. Johnson  
13949 Ventura Blvd., Suite 300, Sherman Oaks, CA 91423 818-788-1914

## DEFENDANTS

PETER D. KEISLER, Acting Attorney General, Department of Justice, et al.

County of Residence of First Listed Defendant SOUTHERN DISTRICT OF CALIFORNIA  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

08 CV 0130 JM LSP

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   |                            |                            |   |                            |                            |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
|   | PTF                        | DEF                        |   | PTF                        | DEF                        |
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability <b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

## V. ORIGIN

- (Place an "X" in One Box Only)
- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

## VI. CAUSE OF ACTION

Brief description of cause:  
Action seeking mandamus to compel administrative action.

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:  
JURY DEMAND: ☐ Yes ☐ No

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

12/14/07

SIGNATURE OF ATTORNEY OF RECORD



FOR OFFICE USE ONLY

RECEIPT # 146788 AMOUNT 350.

APPLYING IFP

JUDGE

MAG. JUDGE

1/23/08



**UNITED STATES  
DISTRICT COURT**  
SOUTHERN DISTRICT OF CALIFORNIA  
SAN DIEGO DIVISION

**# 146783 - SR**

**January 23, 2008  
15:27:20**

**Civ Fil Non-Pris**

USAO #.: 08CV0130 PRLA  
Judge..: JEFFREY T MILLER  
Amount.: \$350.00 CK  
Check#.: BC2006143

**Total-> \$350.00**

**FROM: GREEN V. KEISLER  
CIVIL FILING**